

§ 386.54

The motion must be filed with the official who approved the subpoena. The filing of a motion shall stay the effect of the subpoena until a decision is reached.

(b) Witnesses shall be entitled to the same fees and mileage as are paid witnesses in the courts of the United States. The fees shall be paid by the party at whose instance the witness is subpoenaed or appears.

(c) Paragraph (a) of this section shall not apply to the Administrator or employees of the FMCSA or to the production of documents in their custody. Applications for the attendance of such persons or the production of such documents at a hearing shall be made to the Assistant Administrator or administrative law judge, if one is appointed, and shall set forth the need for such evidence and its relevancy.

§ 386.54 Administrative Law Judge.

(a) *Powers of an Administrative Law Judge.* The Administrative Law Judge may take any action and may prescribe all necessary rules and regulations to govern the conduct of the proceedings to ensure a fair and impartial hearing, and to avoid delay in the disposition of the proceedings. In accordance with the rules in this subchapter, an Administrative Law Judge may do the following:

- (1) Give notice of and hold prehearing conferences and hearings.
- (2) Administer oaths and affirmations.
- (3) Issue subpoenas authorized by law.
- (4) Rule on offers of proof.
- (5) Receive relevant and material evidence.
- (6) Regulate the course of the administrative adjudication in accordance with the rules of this subchapter and the Administrative Procedure Act.
- (7) Hold conferences to settle or simplify the issues by consent of the parties.
- (8) Dispose of procedural motions and requests, except motions that under this part are made directly to the Assistant Administrator.
- (9) Issue orders permitting inspection and examination of lands, buildings, equipment, and any other physical

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thing and the copying of any document.

(10) Make findings of fact and conclusions of law, and issue decisions.

(11) To take any other action authorized by these rules and permitted by law.

(b) *Limitations on the power of the Administrative Law Judge.* The Administrative Law Judge is bound by the procedural requirements of this part and the precedent opinions of the Agency. This section does not preclude an Administrative Law Judge from barring a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that proceeding.

(c) *Disqualification.* The Administrative Law Judge may disqualify himself or herself at any time, either at the request of any party or upon his or her own initiative. Assignments of Administrative Law Judges are made by the Chief Administrative Law Judge upon the request of the Assistant Administrator. Any request for a change in such assignment, including disqualification, will be considered only for good cause which would unduly prejudice the proceeding.

[70 FR 28485, May 18, 2005]

§ 386.55 Prehearing conferences.

(a) *Convening.* At any time before the hearing begins, the administrative law judge, on his/her own motion or on motion by a party, may direct the parties or their counsel to participate with him/her in a prehearing conference to consider the following:

- (1) Simplification and clarification of the issues;
- (2) Necessity or desirability of amending pleadings;
- (3) Stipulations as to the facts and the contents and authenticity of documents;
- (4) Issuance of and responses to subpoenas;
- (5) Taking of depositions and the use of depositions in the proceedings;
- (6) Orders for discovery, inspection and examination of premises, production of documents and other physical objects, and responses to such orders;
- (7) Disclosure of the names and addresses of witnesses and the exchange of documents intended to be offered in evidence; and